



POLICE DEPARTMENT

The  
City  
of  
New York

September 1, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jose Anaya  
Tax Registry No. 905693  
76 Precinct  
Disciplinary Case No. 2135-10

The above-named member of the Department appeared before me on April 11, 2011, charged with the following:

1. Said Police Officer Jose Anaya, assigned to the 90 Precinct Detective Squad, on or about October 16, 2006, at a location known to this Department, with intent to obtain a benefit or deprive another person of a benefit, said officer committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, to wit: said officer contacted Sergeant Henry Conde, Tax #905990, regarding a pending Internal Affairs investigation involving said officer, resulting in Sergeant Conde obtaining confidential information from the Internal Affairs Professional Computer System, which was not related to the official business of the Department and divulging said information said officer.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT  
NYS Penal Law Section 195.00(1) – OFFICIAL MISCONDUCT

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and the Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

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DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Ralph DiMeglio as a witness and offered the out-of-court statement of Person A [REDACTED]

Sergeant Ralph DiMeglio

DiMeglio has been employed by the New York City Police Department since 1985 and has been assigned to the Internal Affairs Bureau (IAB) Group 31 since December 2003. As a case investigator at IAB Group 31, his duties include investigating allegations of criminality and serious misconduct against members of the service. Those cases are categorized by case numbers and letters to indicate their seriousness. A1, A2, B1, and B2 are serious.

DiMeglio testified that he had been involved in an A2 investigation pertaining to former Detective [REDACTED]. The [REDACTED] case, C06-0258, was a case of criminal association involving a narcotics dealer. DiMeglio agreed that there were numerous logs associated with that case including a log relating to Sergeant Henry Conde because of an allegation that Conde disclosed confidential information to [REDACTED] IAB later discovered that that allegation was true. After generating the log, DiMeglio testified that IAB also conducted an audit of Conde's usage of the Internal Affairs professional database system. During this audit, IAB noticed that Conde had accessed several other people on the database.

DiMeglio stated that DX 1 was the audit conducted on Conde's usage of the database. DiMeglio noted that on October 16, 2006, Conde accessed Respondent's comprehensive history. DiMeglio explained that Conde was assigned to the Queens IAB group. DiMeglio testified that unlike many of the other individuals whose reports Conde had accessed for a justifiable reason, there seemed no obvious reason for Conde to have accessed Respondent's report. IAB also noticed that on October 16, 2006, Respondent had an open active log, 06-34393, against him, dated October 14, 2006.

DiMeglio said that log number 06-34393 was a case involving a domestic dispute with Respondent and Person A [DX 2A]. The allegations in the log included a domestic verbal dispute and domestic harassment. The log indicated that Respondent was placed on modified assignment as a result of the incident, but that he was not arrested. DiMeglio also testified that Respondent was added as a log under the [REDACTED] case because he allegedly impeded his own investigation with regard to log 06-34393.

DiMeglio testified that in March 2010, the United States Attorney's office for the Eastern District of New York, specifically Person B [REDACTED] the Chief of Criminal Crimes, gave IAB the green light to approach and interview Person A [REDACTED] On March 25, 2010, DiMeglio and Lieutenant Mark DiFazio met with Person A [REDACTED] at her house seeking to understand why Person A [REDACTED] reported an incident that occurred on October 14, 2006 and then called an IAB center on October 20, 2006, to withdraw the case. DiMeglio stated that he had spoken with Person A [REDACTED] over the phone. On October 20, 2006, Person A [REDACTED] called DiMeglio and stated very adamantly that she wanted somebody to go to her house and bring her a withdrawal complaint form, a short form indicating a complainant's intent to withdraw their complaint. DiMeglio told her that his group, 31, did not cover domestic

allegations and that Person A should contact the Detective Bureau Investigations Unit or the IAB Command Center. DiMeglio found it strange that Person A would file a complaint and later call to withdraw it. Through his review of the [REDACTED] case, DiMeglio noticed that on October 14, 2006; Person A filed the complaint against Respondent; on October 16, 2006 Conde looked at Respondent's case, and on October 20<sup>th</sup>, 2006 Person A withdrew her complaint. Upon reviewing log 06-35256, DiMeglio stated that it indicated that Person A wanted to withdraw her complaint via telephone.

On March 25, 2010, when DiMeglio and DiFazio spoke to Person A at her residence, she told them that she had not withdrawn her complaint freely and willingly but because she was under pressure from Respondent. She explained that she had received numerous calls from Respondent telling her that she had ruined his life and his career. She was very upset and wanted Respondent out of her life. DiMeglio testified that Person A and Respondent had broken up several months before October of 2006. Person A told DiMeglio that she knew the "withdrawal form" terminology because Respondent had referred to the withdrawal protocol that way and had told her that he had a friend in Internal Affairs. DiMeglio explained that the four-year lapse between the time of the incident and the date of the interview was a result of the joint nature of the [REDACTED] investigation. He stated that US Attorney Person B had suggested that Person A was not to be interviewed until further notice.

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DiMeglio stated that based on the completion of his investigation as it pertained to Respondent under the [REDACTED] case, IAB Group 31 had substantiated a charge of official misconduct. DiMeglio used as evidence both the Person A interview and an interview of Respondent pursuant to Patrol Guide 206-13, held on February 19, 2010.

During that interview, Respondent stated that he did have contact with Conde in regard to the domestic incident. During the interview, Respondent mentioned an underlying phrase that Conde stated to Respondent basically along the lines of "What she said [Person A] is what is in the log [DX 2A, Log No. 06-34393]."

During cross-examination, DiMeglio admitted that he did not officially document Person B instruction not to interview Person A but he noted that everyone knew that Person A was not to be spoken to. DiMeglio testified that he did not receive the directive from Person B not to speak with Person A until after the report detailing Conde's computer usage was prepared by Group 7 on November 9, 2006, and IAB became aware of Respondent's involvement in the case. DiMeglio denied being aware that the Chief of Detectives Investigation Unit (CDIU) received this case for investigation on October 30, 2006. DiMeglio admitted that he is now aware that CDIU spoke with Person A on October 30, 2006, and confirmed that she wanted to retract her complaint against Respondent. He admitted that she had told CDIU that she was not being pressured or threatened by Respondent to retract her complaint at both the October 30 investigation and again during an interview on November 13, 2006. DiMeglio, however, did not know until he reviewed the Detective Bureau case folder in 2010, that the Detective Bureau investigation had taken place.

DiMeglio admitted that he had previously indicated in his testimony that Conde had informed Respondent that he could have Person A execute a withdrawal complaint form. DiMeglio stated that he does not believe that from the time Person A called the IAB Command Center on October 20, 2006, until the present Person A ever actually signed a withdrawal complaint form. DiMeglio denied having filled out a report that

indicated that Person A had signed such a document. [DiMeglio was presented with a worksheet prepared on February 19, 2010, which was an official Department interview with Respondent]. DiMeglio admitted that in worksheet no. 357, which he typed up, he indicated that Person A had eventually signed a withdrawal complaint form. He denied that this was a mistake. He explained that although Person A did not sign a withdrawal complaint form, it seemed to DiMeglio that she had at the time he wrote worksheet 357 based on the information in the log. Thus, he admitted to writing in that worksheet that she had signed a withdrawal complaint form. A month later, however, DiMeglio clarified Person A statement in an interview where he explicitly asked her if she had signed a withdrawal complaint form and she replied no.

DiMeglio acknowledged that the 18-month statute of limitations had expired for Respondent, but he did not admit that was his reason for charging Respondent with a crime. He explained that IAB Group 31 was advised by the Department Advocate's Office that the appropriate charge should be official misconduct. DiMeglio testified that Person A called the police, but he does not recall whether she called 911 or the 115 Precinct. DiMeglio affirmed that Person A indicated to him that Respondent had attempted to call her many times after the incident to get her to withdraw the charges.

As a long-time member of IAB, DiMeglio admitted that it was generally part of IAB's investigative techniques to contact phone companies and get a record of individual's phone calls to verify the supposed calls coming back and forth, but he denied doing so in this case. DiMeglio admitted that this evidence would have been useful, but he explained that he was not on the case at first. CDIU was handling the case. IAB Group 31 did not take over the case until November 6, 2006. At that point, DiMeglio

testified that he did not subpoena the cell phone records for Respondent and Person A because he did not see a need for it at the time. His major focus was on the [REDACTED] case and it did not turn to Respondent's case until some time later. Furthermore, he explained that subpoenaing phone records would not necessarily indicate what the calls between Respondent and Person A were about. He did, however, admit that the records would show the number of calls made and might be probative if all of the calls were directed from Respondent to Person A.

DiMeglio admitted to speaking with Conde after his official Department interview. DiMeglio admitted that Conde was acquitted of every charge in federal court, including the one regarding Conde's improper access of Respondent's log. DiMeglio admitted that Conde stated at trial that he never gave Respondent any confidential information from the log and testified the same in his official Department interview. DiMeglio testified that Respondent's charges are based on the belief that Conde verified for Respondent that there was a log and a case in regard to his domestic dispute. Respondent was modified at the time, but DiMeglio stated that many times the officer in question will not know what the modification is or where it is going. While the captain had told Respondent that he was being modified for the good order of the Department, DiMeglio does not believe that on the day of the modification, Respondent actually knew the cause of his modified assignment.

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DiMeglio denied being aware that in the early hours of October 14, 2006, Person A called Respondent, after calling the 115 Precinct, to tell him the exact nature of the charges against him. He also denied knowledge that Person A and Respondent reunited shortly after the incident and stayed together for another four months. He denied

knowledge that in December of 2006, Person A had an [REDACTED] which Respondent paid for and accompanied her to. DiMeglio agreed that the basis for this case was Conde speaking to Respondent and verifying that there was a log consistent with what Respondent had told him. DiMeglio agreed that Conde had stated that he told Respondent to cooperate with the investigation and to tell the truth. DiMeglio denied Conde ever asking investigators in the case to take it easy on Respondent or Respondent ever asking him to do so.

DiMeglio agreed that Respondent testified for the government at Conde's federal trial. DiMeglio agreed that by letter dated February 19, 2010, Person B stated that Respondent had cooperated fully with the U.S. Attorney's office. Additionally, Respondent testified at the trial room case as a Department witness. DiMeglio agreed that Respondent lost 12 vacation days as a result of not notifying the job that he was involved in a domestic incident and a verbal dispute. DiMeglio admitted that a schedule B Command discipline was initially contemplated for the present case.

Upon questioning by the Court, DiMeglio testified that the audit of Conde's review of IAB files revealed that Conde had looked into Respondent's comprehensive IA Pro and all of Respondent's logs, although DiMeglio was not able to state what Conde looked at specifically. DiMeglio denied that there is a way using the database to look at one specific log relating to one specific accident. Instead when opening up the application, users must scroll down the screen from log to log. DiMeglio denied that there was a way to tell by the audit whether a user had scrolled down or printed specific logs.

During re-cross-examination, DiMeglio admitted that in 2010, he interviewed Person A at her home with her husband and one child present. Person A husband was not in the room at all times during the interview, but the small child was running around, so he was in and out, tending to the child.

Out-of-Court Statement of Person A

[Department's Exhibit 3 and 3A (DX 3/DX 3A) were marked and received into evidence. DX 3 is the compact disc of the interview by IAB of Person A and DX 3A is the transcript of that interview of Ms. Person A which was held on March 25, 2010. In the interview, Person A testified that in the early hours of October 14, 2006, she was on Queens Boulevard eating at a diner with a friend after a night out. She stated that as she was leaving the diner, Respondent showed up and began yelling at her. She stated that she and Respondent had been broken up for several months. According to Person A Respondent asked her where she had been and told her that he had been calling all night. Person A told him that he was crazy and needed help. Respondent then told Person A that he was sorry, so Person A rolled down the window and Respondent began to yell again. As Person A rolled up the window, Respondent reached in and grabbed Person A by the hair. Person A testified that she then pulled away and Respondent continued trying to open the car doors, but Person A sped off.

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Person A testified that she then called the 115 Precinct. Person A told the woman on the phone who the Respondent was and exactly what happened. The woman from the Precinct asked Person A to come in the next day. At the 115 Precinct the next morning, Person A spoke with two uniformed individuals. She told them what happened, but they

did not tell her what was going on with Respondent. Person A stated that after the report, Respondent began following her. He told her that if she dropped the charges, he would leave her alone. Person A testified that Respondent also began calling her a few days after filing the complaint, but she did not pick up. Within the next month, Person A finally decided to pick up the phone. Respondent told her that she ruined his life and career. He told her if she dropped the charges, he would not speak to her again. Person A mentioned that Respondent had in the past spoken about watching some of his ex-girlfriends. He had people follow them, take pictures of them, or tap their phones. Person A stated that Respondent told her that he would have people follow her and take pictures of her so that he would know everything she was doing. Person A stated that she told members of the 115 Precinct about this.

Person A agreed that Respondent asked her to call IAB. She also agreed that he mentioned a friend in IAB, although she does not recall his name, who told Respondent that he ought to have Person A call to drop the charges. Person A stated that she later spoke with an individual at IAB to withdraw the complaint. However, she denied ever signing a withdrawal complaint form. After calling to withdraw the complaint, Person A agreed that there were several different agencies calling her. Person A stated that soon after she withdrew the complaint, Respondent left her alone].

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Respondent's Case

Respondent offered the out-of-court statement of Sergeant Henry Conde and Respondent testified in his own behalf.

Out-of-Court Statement of Sergeant Conde

[Respondent's A (RX A) was marked and received into evidence. RX A is the transcript of the official Department interview of subject Sergeant Henry Conde, which was conducted by Sergeant Ralph DiMeglio and Lieutenant Mark DiFazio on February 8, 2010. Conde testified that he was appointed to the Department in February 1992, and assigned to the IAB group 27, which covers Queen South, on approximately December 20, 2005. Conde agreed that after arriving at IAB, he signed a notification letter regarding the confidentiality of the information handled there and the penalties for wrongful disclosure. Conde stated that Respondent called him after he had already been modified. According to Conde, Respondent called to find out how long the process of modification would take because he was in the White Shield program. Conde testified that he told Respondent that he would be fine. He told Respondent to be honest and cooperate with investigators.

Conde denied telling Respondent to tell Person A to sign a withdrawal complaint form. He testified that he told Respondent, "Tell your [REDACTED] to speak with the IAB investigator, and you just stay out of it." Conde explained that his searches of past co-workers in the 90 Precinct was the easiest way to train himself on the IA Pro system. He denied getting any official training in the IA Pro system during the first six or seven months of his assignment to IAB, other than asking colleagues simple questions about the system. Conde denied being asked by any of his past coworkers to run their files with the exception of [REDACTED]. Furthermore, Conde denied telling the people whose files he had run about any of the information in their IA Pro.]

Respondent

Respondent testified that he served in the United States Marine Corps of the military for seven years prior to being employed by the Police Department. He graduated from the Academy in August of 1994, when he was approximately 23 years old, and was assigned to the 90 Precinct for the next 17 years. He was transferred out of the 90 precinct to patrol in the 76 Precinct in January of 2011, but was not given a reason why.

Respondent first met Conde when they graduated from the Academy and were assigned together to the 90 Precinct. They both remained at the Precinct until Conde was promoted to sergeant and transferred to the 114 Precinct in Queens. Respondent testified that the two had an excellent relationship. They were friends who socialized even after Conde left the 90 Precinct.

Respondent testified that on October 14, 2006, he was working a 4:00 p.m. to 1:00 a.m. tour in the 90 Precinct Detective Squad. He then did approximately three and a half hours in overtime and signed out at 4:30 a.m. He had been in the White Shield program for 8 months at that time.<sup>1</sup> Respondent testified that the expectation for staying in the unit was to complete investigative work and that he had about 10 months remaining before receiving his gold shield.

Respondent stated that on October 14, 2006, he was involved in an altercation with Person A who was his [REDACTED] at the time and had been since approximately June of 2005. He explained that earlier that day, Person A told him that she was going out with her “girlfriends” that night. It was not until later in the day that Respondent realized that Person A statement was peculiar because she only really went out with one friend.

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<sup>1</sup> The White Shield program allows patrol and anticrime officers to work for the detective unit for 18 months before being promoted to the rank of detective.

On his way home from work at 4:30 in the morning, Respondent decided to stop by a diner that he and Person A frequented. When he arrived at the lot, he noticed that Person A vehicle was parked. As he exited his vehicle and walked toward the diner, Respondent saw Person A with a male whom he did not recognize. Respondent asked Person A what was going on. According to him, she replied, "It's not what you think." Respondent told the unidentified man that he was Person A [REDACTED] and the man replied that he did not know that and did not want to be a part of the interaction. He then left in his car, and Person A walked to her vehicle. Respondent followed her. When Person A was in the vehicle, she turned on the car and lowered the window. The two started arguing for over 15 minutes. Respondent testified that he told Person A that he could not believe that she was doing this despite the fact that he had been caring for her [REDACTED] and they had been together for a year and a half. Respondent admitted that the conversation got heated. Person A stated that she "did not want to do this anymore," and drove away.

Respondent denied notifying the job of the incident. On his way home, he testified that Person A called to tell him that she had called the 115 Precinct and told them that she and Respondent had gotten into a verbal altercation and that Respondent had tried to drag her by the hair out of the car. Respondent told her that she was lying, but according to Respondent, Person A replied, "It's not the first time that I've called the police on a man."

Respondent stated that he then turned around and proceeded to the 90 Precinct because he knew that he would eventually have to answer to some charges. At the 90 Precinct, he spoke to two delegates downstairs. A detective, whose name he did not

recall, received a phone call from IAB directing Respondent to proceed to the 115 Precinct. He and the two delegates then drove to the 115 Precinct. At the 115 Precinct, Respondent was put into a separate room from the delegates. The duty captain came into the delegates' room and told them to follow him. The delegates returned several minutes later and told Respondent that he was on modified assignment for the good of the Department. They told Respondent what Person A had alleged, including her allegation that Respondent had pulled her out of the car by her hair. Respondent denied having an official Department interview that night. He also denied calling Person A to plead with her to drop the charges.

Respondent said that after the incident, Person A called him 15 to 20 times a night stating in the beginning that she had done this kind of thing to men in the past, and then by the last call, that she was sorry for having done this to him. Two nights later, when he received a call from the 115 Precinct, he was on the phone with Person A. He told her that he could not speak with her anymore and hung up. Respondent stated that after being modified, Person A continued to call him, but he denied picking up her phone calls.

Respondent admitted that on October 16, 2006, he called Conde because he was on the detective track and wanted to know how the modification procedure would affect his promotion prospects. Respondent denies being thrown out of the White Shield program when he returned to work. He stayed in the program until January 2011, when he was transferred. Respondent told Conde his version of the events as well as the version Person A had told him over the phone. According to Respondent, Conde told

him to cooperate fully, that he would have an official Department interview, and that Conde would look into it.

Respondent acknowledged that he spoke with Conde again a little over a month later. Conde basically told Respondent that what Person A had stated in her complaint is what she told Respondent. Respondent denied ever asking Conde to access the log or use the IAB computer to research the case. He denied asking Conde to contact the assigned investigators and ask them to go easy on him or to expedite his case. Respondent denied that there was anything in the second conversation about Person A dropping the charges.

Respondent admitted to calling Conde to speak with him a third time. Respondent testified that he told Conde that he and Person A were back together but IAB was continuing to contact her despite the fact that she was not answering their calls. Respondent asked Conde if this made him look bad. Respondent told Conde that he had not instructed Person A on how to act. According to Respondent, Conde told him that it would not hurt for Person A to start answering IAB's calls. Conde stated that if Person A wanted to, there was a withdrawal complaint form which she could sign. Respondent denied knowledge that Person A ever signed the form. Respondent agreed that Person A dropped the charges on October 20, 2006, but he denied pressuring or even having a conversation with her about dropping the charges.

Respondent admitted that he was aware that Person A denied ever getting back together with him. He explained that working in the detective squad, he knew that calls could be traced. As a result, initially he decided not to pick up Person A calls because he did not want to be associated with her. Toward the end of November, Person A reached out to Respondent's brother and told him that she was pregnant. Respondent

then called Person A who told him that she was pregnant and did not know what to do. He testified that she did not indicate whether or not he was the father. Respondent admitted that Person A had ██████████ that he paid for it, and that the two got back together from that time until approximately June or July of 2007. As proof of their ongoing relationship, Respondent provided the receipt for a Movado watch that Person A had given him for Christmas of 2006. Respondent explained that Person A gave him the receipt because the watch came with a two-year extended warranty which required the receipt (RX B). Respondent stated that he had another receipt with Person A name, from February 3, 2007, when the two returned to the Queens mall to have the Movado watch sized (RX C). Finally, Respondent stated that he also has a picture of Person A and himself, from when the two visited Respondent's family in Florida in June of 2006. [The picture was received into evidence and marked as (RX D)]

In addition to this proof of their relationship, Respondent testified that he accessed his emails but was not able to print out any of the emails that he received from Person A during this time. He stated that she sent several emails, which included an email from September 19, 2006, which contained pictures of a puppy that Person A was intending to buy. On February 15, 2007, Person A requested him on the social network, MySpace. On April 24, 2007, Person A was getting her registered nurse license and needed an application. She had the application sent to him so that he could print it out.

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Respondent stated that Person A messaged him on MySpace on July 5, 12, and 20 of 2007. On July 24, 2007, Person A sent him a message stating that she missed him and was thinking a lot about him. On July 26, Person A sent Respondent a picture of herself with her new haircut. He testified that his relationship with Person A ended around that

time, in July of 2007. Respondent stated that on August 27, 2009, he received a final email from Person A stating that she had found one of Respondent's old emails that it reminded her of him, that she hoped everything was well, and that she wanted to know what he was up to.

Respondent agreed that that the U.S. Attorney's office contacted him. He stated that he was first contacted by the FBI. He told the agent that he was driving to Florida on vacation for a week and that on his return, he would contact the agent to schedule a meeting. Respondent admitted when he returned, he met with the U.S. attorney and testified for the U.S. attorney in a trial against [REDACTED] and Conde. Respondent testified that he answered every question put forth. Respondent admitted that he was contacted by the Advocate's office with respect to Conde's administrative trial. He admitted that he met with the Advocate, testified as a witness for the Advocate's case against Conde, and answered every question truthfully. Respondent denied Conde ever giving him confidential information accessed from the IAB professional computer system.

Respondent agreed that he ultimately received charges for the underlying dispute, even though there had been some earlier discussion about handling the discipline at the command level. He testified that he lost 12 vacation days. Respondent agreed that there were two domestic charges: one had to do with pulling hair and the other had to do with not reporting the incident. Respondent agrees that he pled guilty to both counts but denies actually pulling Person A hair. He explained that he pled guilty because he wanted to be finished, move on with his career, and get promoted to detective. Respondent, however, denies that he ever got promoted. Respondent asserts that he has

fully cooperated with both the Advocate's office and anyone else who has contacted him with regard to the Conde case.

During cross-examination, Respondent testified that he received a verbal directive that he was on modified assignment from a sergeant from IAB at the 115 Precinct on October 14, 2006. He was not on duty at the time. He told the sergeant that he had his shield, but not his guns. The sergeant then followed Respondent to the 90 Precinct where he and a sergeant from the 90 Precinct retrieved Respondent's gun from his locker. The IAB sergeant then took the gun, Respondent's shield, and his ID card.

Respondent acknowledged that at this point, he had already received the call from **Person A**. He also agreed that at this point, he only had the information **Person A** had given him over the phone regarding her complaint. Respondent was unsure whether or not he asked the delegates who accompanied him to the 115 Precinct how long the disciplinary action would take. Respondent denied speaking with either the sergeant at the 115 Precinct who actually put him on modified assignment or the duty captain to ask about the impact of modification on his promotional track. Respondent did, however, agree that he spoke with the sergeant and lieutenant supervising the White Shield program. Respondent was not sure when he spoke with the Lieutenant in charge because he believes that the lieutenant was possibly on vacation. Respondent stated that on the night of October 14, after returning to the 90 Precinct, he spoke with Sergeant John Kelly, who was in charge of the entire detective squad, who told him that his countdown to the detective promotion had stopped. Respondent denied speaking with any representatives from Patrolmen's Benevolent Association regarding his modification status except for the delegates who accompanied him to the 115 Precinct.

Respondent agreed that two days later, on October 16, 2006, he called Conde on his cell phone. Respondent is not sure if he or Conde were on duty at the time. Respondent agreed that he told Conde he was on modified assignment. He agreed that he told Conde about the conversation with Person A and what she had alleged. Respondent denied that Conde specified a timeframe, but agreed that he told Respondent that he would look into it. [Respondent clarified that there were two investigations involving these incidents and two different interviews that occurred. The IAB Group 31 interview, relating to Conde's review of Respondent's log, occurred on February 19, 2010. The CDIU interview was Respondent's first interview which occurred on December 1, 2007].

Department referred Respondent to his testimony on January 19, 2011, at the Department's trial of Conde. Respondent was asked what Conde told him. Respondent referred to page 191, line two of the transcript, where Respondent testified that Conde had stated, "Give me a couple of days, I'll look into it." Respondent agreed that he had said what was on the transcript and agreed that Conde had in fact specified a timeframe for a response, a couple of days.

Respondent testified that the second time he spoke with Conde, a couple of days after the first call, Conde told him that Person A had used the version of events that she told Respondent over the phone as the version she described when she filed the complaint. Respondent denied having any idea exactly what Conde meant by his statement. He testified that at that time he had no idea that IAB's written logs even existed.

Respondent agreed that he called to speak with Conde a third time while he was still modified. Respondent denied knowledge of Conde's involvement in his case. In

fact, he denied knowing who was handling the case altogether. He denied having been served with charges at that point. He agreed that he reached out to Conde in order to tell him that Respondent and Person A had reconciled and ask his advice. According to Respondent, Conde stated that there was a withdrawal complaint form that Person A could fill out. He told Respondent to have Person A cooperate and to cooperate himself. Respondent agrees that he heard DiMeglio testify that on October 20, Person A called the IAB Command Center to ask to withdraw the complaint. Respondent testified that this occurred before his third conversation with Conde.

Other than Conde, Respondent testified that he told other members of the Department that he and Person A had reconciled. Respondent agreed that he pled guilty to both charges and specifications relating to the domestic incident.

Upon questioning by the Court, Respondent agreed that on December 1, 2007, the official Department interview was conducted by CDIU in regard to the domestic incident. Respondent denies at the time having any idea that IAB was investigating his case. Respondent stated that he and Conde had known each other for 12 years when he called Conde in October of 2006. Respondent agreed that the two were friends. He testified that they went on trips together to watch baseball every year. They knew each other's wives, girlfriends, and families. Respondent agreed that in the February 2010 official Department interview with DiMeglio, he discussed the extent of his friendship with Conde. Respondent stated that he believed at that time that the domestic incident was the reason for the modification because it had occurred only four hours before he was called into the 115 Precinct. He denies being interviewed that night.

On re-direct examination, Respondent agrees that he believed, while he was at the 115 Precinct, that the captain told the delegates the reason for Respondent's investigation. Respondent stated that the delegates told him that he was placed on modified because of the allegations Person A made. They said, "You pulled her hair and there's got to be an investigation now." Respondent agreed that was consistent with what Person A had previously told him over the phone. Respondent denies that he doubted at any time what he was being modified for.

#### FINDINGS AND ANALYSIS

Respondent stands charged with intent to obtain a benefit or deprive another person of a benefit, said officer committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, to wit: said officer contacted Sergeant Henry Conde, Tax #905990, regarding a pending Internal Affairs investigation involving said officer, resulting in Sergeant Conde obtaining confidential information from the Internal Affairs Professional Computer System, which was not related to the official business of the Department and divulging said information said officer.

Respondent is found Not Guilty. Evidence adduced at trial established that Respondent had a domestic incident with his [REDACTED] in which he saw her with another man coming out of a diner they frequented at 5 a.m. They argued and resulted in the allegation that Respondent pulled her hair during the altercation. Respondent testified that following the incident, his [REDACTED] contacted him and informed him that she filed a complaint against him. Respondent immediately reported to his command, the 90

Precinct, where he was directed to report to the 115 Precinct that night and was placed on modified assignment.

Respondent testified that he contacted Conde whom he had worked with for several years at 90 Precinct. They graduated from the Police Academy together some 17 years ago and spent time together at the 90 Precinct. They were friends, went to baseball games together and knew each other's families. Conde was now assigned to IAB. Respondent said that he contacted Conde to ascertain whether this domestic incident would hamper his chances of making detective since he was working in the White Shield program. The program required 18 months in the program to make detective and Respondent had completed eight. Respondent denied asking Conde to access IAB records, he just wanted to know whether this domestic case would hamper his making detective. Respondent said Conde told him it depends on the investigation and to just cooperate with IAB. Respondent acknowledged that during his official Department interview, he said that Conde told him he would look into it and get back to him in a few days. Respondent testified that he took this to mean that Conde would investigate his question about the White Shield program and get back to him.

A few days later, Conde got back to Respondent and stated that what Respondent said was what the complainant said. This statement, in and of itself does not mean that Respondent asked Conde to go into the confidential database maintained by IAB and divulge information to Respondent. For instance, there was no evidence that Conde contacted the IAB investigator assigned to Respondent's case to discuss the matter with him. Respondent also testified that he had no knowledge that IAB maintained a database. Evidence adduced at trial established that Conde accessed the database on Respondent's

case along with other members of the service and this could have been done by Conde on his own accord without prompting from Respondent to do so.

It must also be kept in mind that Conde is the supervisor in this instance and has a higher duty and responsibility. He is charged with maintaining the confidentiality of IAB records in his command, not Respondent who is his subordinate, not assigned to IAB and cannot direct Conde to do anything.

DiMeglio was the IAB investigator assigned to the [REDACTED] case. The [REDACTED] case was a criminal association case with an allegation against a detective accused of being associated with a narcotics dealer. It was also alleged that Conde disclosed confidential information to [REDACTED]. Based on that disclosure, an audit was done of all of Conde's usage of the IAB professional database system and it was determined that Conde accessed information on several other people including this Respondent.

DiMeglio, who also investigated Respondent, acknowledged that because of the criminal nature of the [REDACTED] case, a delay occurred in interviewing Respondent's [REDACTED] Person A in this matter--a delay of almost four years. He also admitted that the 18-month statute of limitations had expired, but that was not the reason Respondent in this case was charged with official misconduct. It was upon advice of the Department Advocate's Office. DiMeglio stated that once he interviewed Person A four years later, she stated that Respondent repeatedly contacted her to withdraw her complaint because she was messing up his life. DiMeglio acknowledged that he never sought to obtain telephone records to confirm Person A statement. He explained that his main concern was the [REDACTED] case and he did not see a need to obtain the phone records.

DiMeglio also acknowledged that while he had this case on hold, the Chief of Detectives Investigations Unit (CDIU) also received this case for investigation on October 30, 2006. CDIU spoke with Person A back on October 30, 2006 who confirmed that she wanted to retract her complaint against Respondent and that she told CDIU on two occasions, October 30, 2006 and a second interview on November 13, 2006 that she was not under pressure from Respondent or being threatened by him to do so. Furthermore, based on CDIU's investigation, Respondent was never charged with misconduct for making any threats toward Person A.

DiMeglio admitted that Conde was charged in federal court and acquitted of every charge including improper access of Respondent's log. DiMeglio agreed that Conde testified at trial that he did not disclose any confidential information from the log to Respondent. Conde also gave the same account in his official Department interview. Conde further stated that he ran the records of people from the 90 Precinct to familiarize himself with the database. Conde said with the exception of [REDACTED] no one from the 90 Precinct asked him to run their IAB files. DiMeglio said that Respondent was charged because it was believed that Conde verified for Respondent that there was a log and an IAB domestic dispute case. He admitted, however, that Respondent was already placed on modified assignment by a captain for the good of the Department the night of the incident. DiMeglio believed nonetheless that Respondent did not know why he was modified.

This reasoning by DiMeglio is not plausible. Respondent had a domestic incident with his [REDACTED] gets called into the command and is placed on modified assignment.

Respondent must know that his modification is based on the incident he had with his  
[REDACTED]

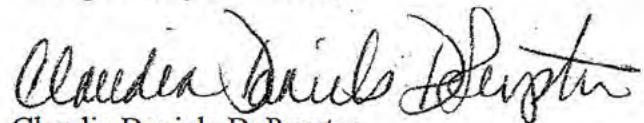
DiMeglio denied having any knowledge that Person A called Respondent after calling the 115 Precinct to make a complaint against Respondent. He denied having knowledge that Respondent and Person A were back together for four months following the domestic incident and that Respondent paid for an abortion for Person A in December 2006. Respondent provided proof of their relationship, submitting a receipt for a Movado watch that he received from Person A in December 2006 (RX B). He also had a receipt signed by Person A when they went to have the watch sized in February 2007 (RX C). Respondent also had a picture of him and Person A visiting his family in Florida in June 2006 (RX D). Respondent testified that he had several emails and MySpace messages from Person A from November 2006 through August 2007 stating that she was, among other things, thinking about him.

Respondent further acknowledged that he accepted a penalty for the domestic incident for pulling Person A hair and not reporting the incident himself. He accepted a penalty of the forfeiture of 12 vacation days in the hope of moving on and getting promoted to detective. He stated that he fully cooperated with the Department in the case against Conde and stated that he was not provided with confidential information by Conde. Respondent denied speaking to the supervisors when he was modified about the White Shield program, but stated that he spoke to the supervisors at the program and later learned that his track to detective had been stopped.

Given the fact that Respondent testified credibly that he reached out to Conde, a long-time friend to inquire about the effects of his modification on his participation in the

White Shield program; and there was no evidence produced at this proceeding that Respondent asked Conde to access confidential information from the IAB computer system, Respondent is found Not Guilty of official misconduct in this matter.

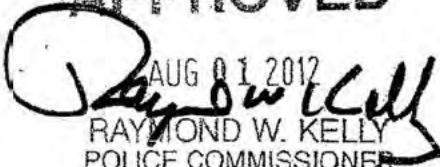
Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner Trials

APPROVED



AUG 01 2012

RAYMOND W. KELLY  
POLICE COMMISSIONER